

**UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF LOUISIANA  
SHREVEPORT DIVISION**

UNITED STATES OF AMERICA

CRIMINAL ACTION NO. 23-00238-01

VERSUS

JUDGE S. MAURICE HICKS, JR.

CORTEZ D. PORTER

MAGISTRATE JUDGE HORNSBY

**MEMORANDUM RULING**

Before the Court is Defendant Cortez D. Porter's ("Porter") Motion to Dismiss the Indictment. See Record Document 18. The Defendant moves to dismiss the one-count indictment, under which he is charged with possessing a firearm in violation of 18 U.S.C. § 922(g)(1). The United States of America ("the Government") filed an opposition to the motion. See Record Document 20. After careful consideration of the parties' submissions, and the law applicable before the Court, Defendant's Motion to Dismiss the Indictment is **DENIED**.

**FACTUAL AND PROCEDURAL BACKGROUND**

On September 27, 2023, a federal grand jury returned a one-count indictment against Porter. See Record Document 1. Count one reads:

On or about September 8, 2023, in the Western District of Louisiana, the defendant, Cortez D. Porter, knowing he had previously been convicted of a crime punishable by imprisonment for a term exceeding one year, did knowingly possess in or affecting commerce a firearm and ammunition, to wit: a Glock, Model: 19, Caliber: 9x19mm, pistol, and ammunition, in violation of Title 18, United States Code, Section 922(g)(1).

Id. Thus, Porter is charged with possessing a firearm in violation of 18 U.S.C. § 922(g)(1).

See id.

In his Motion to Dismiss the Indictment, Porter specifically challenges the validity of Section 922(g)(1) as it purportedly “violates the Second Amendment’s guarantee of ‘the right of the people to keep and bear arms.’” Record Document 18 at 1. Section 922(g)(1) states:

(g) It shall be unlawful for any person—

(1) who has been convicted in any court of, a crime punishable by imprisonment for a term exceeding one year, to ship or transport in interstate or foreign commerce, or possess in or affecting commerce, any firearm or ammunition; or to receive any firearm or ammunition which has been shipped or transported in interstate or foreign commerce.

18 U.S.C. § 922(g)(1). Porter argues that, under recent Supreme Court precedent in New York State Rifle & Pistol Association, Inc. v. Bruen, 142 S. Ct. 2111 (2022), Section 922(g)(1) is unconstitutional as applied to him. See Record Document 18 at 8. He also argues that Section 922(g)(1)’s prohibition against felons possessing firearms is not supported by any enumerated power granted to Congress in the Constitution and lies beyond the reach of the Commerce Clause. See id. at 2.

In response, the Government argues that Bruen did not call into question felon-dispossession statutes and is therefore inapplicable in this case. See Record Document 20 at 1-2. Further, Bruen concerned firearm regulations aimed at “law abiding citizens” and not a statute, namely Section 922(g)(1), that has elements that limit itself to regulating non-law-abiding citizens. Id. at 3. The Government also argues that even if Bruen applied, Section 922(g)(1) would satisfy its historical tradition test. See id. The Government states that because the Commerce Clause challenge is foreclosed by Fifth Circuit precedent, the Court should deny the motion on that ground as well. See id. at 2.

## **LAW AND ANALYSIS**

### **I. Law**

The Second Amendment to the United States Constitution provides that “[a] well regulated Militia, being necessary to the security of a free State, the right of the people to keep and bear Arms, shall not be infringed.” U.S. Const. amend. II. However, it is well-established that, “[l]ike most rights, the right secured by the Second Amendment is not unlimited.” District of Columbia v. Heller, 554 U.S. 570, 626 (2008). Thus, under the Supreme Court’s most recent guidance in Bruen, courts must engage in a two-step inquiry to determine whether a regulation placing restrictions on a party’s Second Amendment rights is constitutional. Bruen, 142 S. Ct. at 2129–30. First, a court must ask whether “the Second Amendment’s plain text covers an individual’s conduct.” Id. If the Second Amendment does cover the individual’s conduct, the court then must ask whether “the regulation is consistent with this Nation’s historical tradition of firearm regulation.” Id. Only where the regulation is “consistent with the Second Amendment’s text and historical understanding” can it pass constitutional muster. Id. at 2131.

### **II. Analysis**

#### **a. Heller/Bruen Inquiry**

Under the first step of the Heller/Bruen inquiry, the Government argues that the Second Amendment’s plain text, understood in its historical context, indicates that Congress is not prevented from disarming felons like Porter. See Record Document 20 at 7. According to the Government, Bruen concerned firearm regulations aimed at “law abiding citizens” and not a statute like Section 922(g)(1) whose own elements limit itself to regulating non-law-abiding citizens. Id. at 3.

Porter argues that applying Bruen's standard, the plain text of the Second Amendment covers the possession of a firearm that Section 922(g)(1) criminalizes. See Record Document 18 at 3. He argues first that the amendment's term "'[k]eep arms' was simply a common way of referring to possessing arms" at the time of the amendment. Id. (citing Heller, 554 U.S. at 583). Second, he argues that he is one of "the people" under the Second Amendment's plain text. Id. (citing Heller, 554 U.S. at 581) (noting that the Second Amendment right "belongs to all Americans")). Porter states that because the Second Amendment's plain text covers him as a member of "the people," and the firearm he allegedly possessed was an otherwise lawful .223 caliber rifle, the Second Amendment "presumptively protects" his possession of the firearm in this case. Id. at 3.

In both Heller and Bruen, the Supreme Court included the qualifier "law-abiding" when discussing those people who are facially protected by the Second Amendment. See Heller, 554 U.S. at 635 (holding the Second Amendment confers the "right of **law-abiding**, responsible citizens to use arms in defense of hearth and home") (emphasis added); Bruen, 142 S. Ct. at 2134 (emphasizing that the petitioners were "two ordinary, **law-abiding**, adult citizens" protected as "people" under the Second Amendment) (emphasis added). The Heller Court apparently used this limitation to ensure that its holding would not "be taken to cast doubt on longstanding prohibitions on the possession of firearms by felons and the mentally ill, or laws forbidding the carrying of firearms in sensitive places such as schools and government buildings." Heller, 554 U.S. at 626–27. Thus, this Court is of the opinion that Porter, as someone who has three prior felony convictions and thus who is not "law-abiding," is not facially protected by the Second Amendment.

On the other hand, this Court acknowledges that “there is some debate over the extent to which the Court’s ‘law-abiding’ qualifier constricts the Second Amendment’s reach.” United States v. Rahimi, 61 F.4th 443, 451 (5th Cir. 2023), *rev’d and remanded* 602 U.S. –, 2024 WL 3074728 (June 21, 2024). Rahimi did not involve a challenge to Section 922(g)(1). Instead, it considered a challenge to 18 U.S.C. § 922(g)(8), banning the possession of firearms by a person subject to a domestic violence restraining order. See id. In Rahimi, the Fifth Circuit stated that “Bruen clearly ‘fundamentally changed’ our analysis of laws that implicate the Second Amendment, ... rendering our prior precedent obsolete.” Id. at 450-51. The Court went on to perform Bruen’s textual and historical inquiry anew and found that Section 922(g)(8) unconstitutionally breaches the Second Amendment right to keep and bear arms. See id. On June 21, 2024, the Supreme Court issued an opinion in Rahimi, reversing the Fifth Circuit and concluding that Section 922(g)(8) is facially constitutional under the Second Amendment. See United States v. Rahimi, No. 22-915, 2024 WL 3074728 (June 21, 2024). The Supreme Court’s decision in Rahimi further supports this Court’s finding that Section 922(g)(1) is constitutional. See United States v. Elliott, No. 21-88, 2024 WL 3161879 at \*2 (E.D. La. June 24, 2024).

The Fifth Circuit recently stated that “given the absence of binding precedent holding that Section 922(g)(1) is unconstitutional, and that it is unclear that Bruen dictates such a result, we have rejected plain error challenges to Section 922(g)(1) under Bruen in several unpublished opinions.” United States v. Jones, 88 F.4th 571, 574 (5th Cir. 2023) (collecting Fifth Circuit cases upholding Section 922(g)(1) post-Bruen); United States v. Fulwiler, No. 23-30152, 2023 WL 7118748 at \*1 (5th Cir. Oct. 27, 2023) (same); United States v. Forbito, No. 22-11026, 2023 WL 8274528 at \*8 (5th Cir. Nov. 30, 2023)

(same). This Court follows the conclusion of the Fifth Circuit that it cannot ignore pre-Bruen Fifth Circuit precedent on the constitutionality of Section 922(g)(1) absent a Fifth Circuit or Supreme Court decision reaching the issue. Additionally, considering the recent Supreme Court Rahimi decision, the Court will not analyze Porter's motion under the second step of the Heller/Bruen analysis.

Porter further argues that the *dicta* in Bruen regarding the continuing validity of the statutory prohibition against firearms does not control the outcome of this case and instead Bruen's holding governs. See Record Document 18 at 5. The Supreme Court stated in Heller and reiterated in Bruen that "nothing in our opinion should be taken to cast doubt on longstanding prohibitions on the possession of firearms by felons." Heller, 554 U.S. at 626-27. Both Justice Alito and Justice Kavanaugh, who were joined by Chief Justice Roberts, expressed in their concurring opinions their explicit intent to leave undisturbed government regulations prohibiting the possession of firearms by felons. For example, Justice Alito stated: "Our holding decides nothing about who may lawfully possess a firearm ... Nor have we disturbed anything that we said in Heller or McDonald v. Chicago ... about restrictions that may be imposed on the possession or carrying of guns." Bruen, 142 S. Ct. at 2157 (Alito, J., concurring). Justice Kavanaugh's concurring opinion, joined by Chief Justice Roberts, provided additional support for felons in possession of firearms restrictions in the wake of Bruen, stating, "Properly interpreted, the Second Amendment allows a 'variety' of gun regulations," id. at 2162 (Kavanaugh, J., joined by Roberts, C.J., concurring) and quoting Heller's statement that "[n]othing in our opinion should be taken to cast doubt on 'longstanding prohibitions on the possession of firearms by felons.'" Id. (quoting Heller, 554 U.S. at 626-27, 128 S.Ct. 2783). The dissent

also viewed the majority opinion statements in the same way. Justice Breyer, joined by Justice Sotomayor and Justice Kagan, stated, “I understand the Court’s opinion today to cast no doubt on” Heller’s treatment of laws prohibiting firearm possession by felons. Id. at 2189 (Breyer, J., joined by Sotomayor, J., and Kagan, J., dissenting).

Lower courts “are generally bound by Supreme Court *dicta*,” particularly when the *dicta* are “recent and detailed.” Hollis v. Lynch, 827 F.3d 436, 448 (5th Cir. 2016); see also United States v. Becton, 632 F.2d 1294, 1296 n. 3 (5th Cir. 1980) (“We are not bound by *dicta*, even of our own court ... *Dicta* of the Supreme Court are, of course, another matter.”). Thus, because Bruen is binding precedent, and even if this language is characterized as *dicta*, at a bare minimum, it is entitled to great weight. See United States v. Schnur, 684 F. Supp. 3d 522 n.6 (S.D. Miss. 2023).

Thus, Porter’s Motion to Dismiss the Indictment is **DENIED** on the above grounds.

#### **b. Commerce Clause Element**

Porter also asserts that Section 922(g)(1)’s prohibitions are not supported by any enumerated power granted to Congress in the Constitution and lie beyond the reach of the commerce clause. See Record Document 18 at 2. Porter concedes that this claim is foreclosed but brought it to preserve it for further review. See id. at 8. The Government asserts that this Court should reject Porter’s argument because he admits that the Fifth Circuit has foreclosed it. See Record Document 20 at 2. The Court agrees with the Government. The Fifth Circuit and other circuit courts have consistently upheld Section 922(g)(1)’s constitutionality as a proper exercise of Congress’s commerce power. See United States v. Mason, No. 23-36, 2023 WL 2589395 at \*1 (N.D. Tex. Mar. 21, 2023) (citing United States v. Alcantar, 733 F.3d 143 (5th Cir. 2013)); United States v.

Daugherty, 264 F.3d 513, 518 (5th Cir. 2001) (collecting cases holding that § 922(g)(1) is a valid exercise of the commerce power); United States v. Carrasco, No. 22-11229, 2024 WL 244934 at \*1 (5th Cir. Jan. 23, 2024) (“We have consistently upheld the constitutionality of Section 922(g) as ‘a valid exercise of Congress’s authority under the Commerce Clause’”); United States v. Gateward, 84 F.3d 670, 672 (3d Cir. 1996) (“We therefore join eight courts of appeal upholding the constitutionality of § 922(g)(1) as a valid exercise of the commerce power.”). Thus, the Motion to Dismiss regarding this element is also **DENIED**.

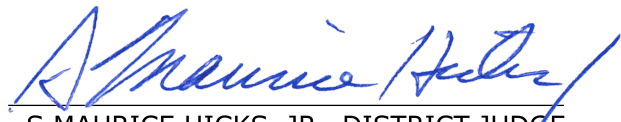
### **CONCLUSION**

For the foregoing reasons,

**IT IS ORDERED** that Defendant’s Motion to Dismiss the Indictment (Record Document 18) is **DENIED**.

An order consistent with the terms of this ruling shall issue herewith.

**THUS DONE AND SIGNED** in Shreveport, Louisiana, this the 15th day of July, 2024.

  
S. MAURICE HICKS, JR., DISTRICT JUDGE  
UNITED STATES DISTRICT COURT